
SENATE BILL 5571

State of Washington

62nd Legislature

2011 Regular Session

By Senator Rockefeller

Read first time 01/31/11. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to the permitting of anaerobic digestion under the
2 clean air act; amending RCW 70.94.161; adding a new section to chapter
3 70.94 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
6 public interest to encourage and foster the development of clean,
7 renewable energy technology and intends to create a limited permitting
8 exemption under chapter 70.94 RCW for anaerobic digestion in order to
9 minimize any regulatory burdens inhibiting the furtherance of the
10 stated public interest.

11 **Sec. 2.** RCW 70.94.161 and 2008 c 14 s 6 are each amended to read
12 as follows:

13 Except as otherwise provided in this section, the department of
14 ecology, or board of an authority, shall require renewable permits for
15 the operation of air contaminant sources subject to the following
16 conditions and limitations:

17 (1) Permits shall be issued for a term of five years. A permit may
18 be modified or amended during its term at the request of the permittee,

1 or for any reason allowed by the federal clean air act. The rules
2 adopted pursuant to subsection (2) of this section shall include rules
3 for permit amendments and modifications. The terms and conditions of
4 a permit shall remain in effect after the permit itself expires if the
5 permittee submits a timely and complete application for permit renewal.

6 (2)(a) Rules establishing the elements for a statewide operating
7 permit program and the process for permit application and renewal
8 consistent with federal requirements shall be established by the
9 department by January 1, 1993. The rules shall provide that every
10 proposed permit must be reviewed prior to issuance by a professional
11 engineer or staff under the direct supervision of a professional
12 engineer in the employ of the permitting authority. The permit program
13 established by these rules shall be administered by the department and
14 delegated local air authorities. Rules developed under this subsection
15 shall not preclude a delegated local air authority from including in a
16 permit its own more stringent emission standards and operating
17 restrictions.

18 (b) The board of any local air pollution control authority may
19 apply to the department of ecology for a delegation order authorizing
20 the local authority to administer the operating permit program for
21 sources under that authority's jurisdiction. The department shall, by
22 order, approve such delegation, if the department finds that the local
23 authority has the technical and financial resources, to discharge the
24 responsibilities of a permitting authority under the federal clean air
25 act. A delegation request shall include adequate information about the
26 local authority's resources to enable the department to make the
27 findings required by this subsection. However, any delegation order
28 issued under this subsection shall take effect ninety days after the
29 environmental protection agency authorizes the local authority to issue
30 operating permits under the federal clean air act.

31 (c) Except for the authority granted the energy facility site
32 evaluation council to issue permits for the new construction,
33 reconstruction, or enlargement or operation of new energy facilities
34 under chapter 80.50 RCW, the department may exercise the authority, as
35 delegated by the environmental protection agency, to administer Title
36 IV of the federal clean air act as amended and to delegate such
37 administration to local authorities as applicable pursuant to (b) of
38 this subsection.

1 (3) In establishing technical standards, defined in RCW 70.94.030,
2 the permitting authority shall consider and, if found to be
3 appropriate, give credit for waste reduction within the process.

4 (4)(a) Operating permits shall apply to all sources ~~((+a))~~;

5 (i) Where required by the federal clean air act ~~((+r))~~; and ~~((+b))~~

6 (ii) For any source that may cause or contribute to air pollution
7 in such quantity as to create a threat to the public health or welfare.
8 ~~((Subsection))~~

9 (b) (a) of this subsection ~~((is))~~ does not ~~((intended to))~~ apply
10 to:

11 (i) The operation of an anaerobic digester consistent with section
12 3 of this act for the production of renewable energy; or

13 (ii) Small businesses, except when both of the following
14 limitations are satisfied: ~~((+i))~~ (A) The source is in an area
15 exceeding or threatening to exceed federal or state air quality
16 standards; and ~~((+ii))~~ (B) the department provides a reasonable
17 justification that requiring a source to have a permit is necessary to
18 meet a federal or state air quality standard, or to prevent exceeding
19 a standard in an area threatening to exceed the standard. For purposes
20 of this subsection "areas threatening to exceed air quality standards"
21 shall mean areas projected by the department to exceed such standards
22 within five years. Prior to identifying threatened areas the
23 department shall hold a public hearing or hearings within the proposed
24 areas.

25 (5) Sources operated by government agencies are not exempt under
26 this section.

27 (6) Within one hundred eighty days after the United States
28 environmental protection agency approves the state operating permit
29 program, a person required to have a permit shall submit to the
30 permitting authority a compliance plan and permit application, signed
31 by a responsible official, certifying the accuracy of the information
32 submitted. Until permits are issued, existing sources shall be allowed
33 to operate under presently applicable standards and conditions provided
34 that such sources submit complete and timely permit applications.

35 (7) All draft permits shall be subject to public notice and
36 comment. The rules adopted pursuant to subsection (2) of this section
37 shall specify procedures for public notice and comment. Such
38 procedures shall provide the permitting agency with an opportunity to

1 respond to comments received from interested parties prior to the time
2 that the proposed permit is submitted to the environmental protection
3 agency for review pursuant to section 505(a) of the federal clean air
4 act. In the event that the environmental protection agency objects to
5 a proposed permit pursuant to section 505(b) of the federal clean air
6 act, the permitting authority shall not issue the permit, unless the
7 permittee consents to the changes required by the environmental
8 protection agency.

9 (8) The procedures contained in chapter 43.21B RCW shall apply to
10 permit appeals. The pollution control hearings board may stay the
11 effectiveness of any permit issued under this section during the
12 pendency of an appeal filed by the permittee, if the permittee
13 demonstrates that compliance with the permit during the pendency of the
14 appeal would require significant expenditures that would not be
15 necessary in the event that the permittee prevailed on the merits of
16 the appeal.

17 (9) After the effective date of any permit program promulgated
18 under this section, it shall be unlawful for any person to: (a)
19 Operate a permitted source in violation of any requirement of a permit
20 issued under this section; or (b) fail to submit a permit application
21 at the time required by rules adopted under subsection (2) of this
22 section.

23 (10) Each air operating permit shall state the origin of and
24 specific legal authority for each requirement included therein. Every
25 requirement in an operating permit shall be based upon the most
26 stringent of the following requirements:

- 27 (a) The federal clean air act and rules implementing that act,
28 including provision of the approved state implementation plan;
- 29 (b) This chapter and rules adopted thereunder;
- 30 (c) In permits issued by a local air pollution control authority,
31 the requirements of any order or regulation adopted by that authority;
- 32 (d) Chapter 70.98 RCW and rules adopted thereunder; and
- 33 (e) Chapter 80.50 RCW and rules adopted thereunder.

34 (11) Consistent with the provisions of the federal clean air act,
35 the permitting authority may issue general permits covering categories
36 of permitted sources, and temporary permits authorizing emissions from
37 similar operations at multiple temporary locations.

1 (12) Permit program sources within the territorial jurisdiction of
2 an authority delegated the operating permit program shall file their
3 permit applications with that authority, except that permit
4 applications for sources regulated on a statewide basis pursuant to RCW
5 70.94.395 shall be filed with the department. Permit program sources
6 outside the territorial jurisdiction of a delegated authority shall
7 file their applications with the department. Permit program sources
8 subject to chapter 80.50 RCW shall, irrespective of their location,
9 file their applications with the energy facility site evaluation
10 council.

11 (13) When issuing operating permits to coal fired electric
12 generating plants, the permitting authority shall establish
13 requirements consistent with Title IV of the federal clean air act.

14 (14)(a) The department and the local air authorities are authorized
15 to assess and to collect, and each source emitting one hundred tons or
16 more per year of a regulated pollutant shall pay an interim assessment
17 to fund the development of the operating permit program during fiscal
18 year 1994.

19 (b) The department shall conduct a workload analysis and prepare an
20 operating permit program development budget for fiscal year 1994. The
21 department shall allocate among all sources emitting one hundred tons
22 or more per year of a regulated pollutant during calendar year 1992 the
23 costs identified in its program development budget according to a
24 three-tiered model, with each of the three tiers being equally
25 weighted, based upon:

26 (i) The number of sources;

27 (ii) The complexity of sources; and

28 (iii) The size of sources, as measured by the quantity of each
29 regulated pollutant emitted by the source.

30 (c) Each local authority and the department shall collect from
31 sources under their respective jurisdictions the interim fee determined
32 by the department and shall remit the fee to the department.

33 (d) Each local authority may, in addition, allocate its fiscal year
34 1994 operating permit program development costs among the sources under
35 its jurisdiction emitting one hundred tons or more per year of a
36 regulated pollutant during calendar year 1992 and may collect an
37 interim fee from these sources. A fee assessed pursuant to this

1 subsection (14)(d) shall be collected at the same time as the fee
2 assessed pursuant to (c) of this subsection.

3 (e) The fees assessed to a source under this subsection shall be
4 limited to the first seven thousand five hundred tons for each
5 regulated pollutant per year.

6 (15)(a) The department shall determine the persons liable for the
7 fee imposed by subsection (14) of this section, compute the fee, and
8 provide by November 1, 1993, the identity of the fee payer with the
9 computation of the fee to each local authority and to the department of
10 revenue for collection. The department of revenue shall collect the
11 fee computed by the department from the fee payers under the
12 jurisdiction of the department. The administrative, collection, and
13 penalty provisions of chapter 82.32 RCW shall apply to the collection
14 of the fee by the department of revenue. The department shall provide
15 technical assistance to the department of revenue for decisions made by
16 the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All
17 interim fees collected by the department of revenue on behalf of the
18 department and all interim fees collected by local authorities on
19 behalf of the department shall be deposited in the air operating permit
20 account. The interim fees collected by the local air authorities to
21 cover their permit program development costs under subsection (14)(d)
22 of this section shall be deposited in the dedicated accounts of their
23 respective treasuries.

24 (b) All fees identified in this section shall be due and payable on
25 March 1, 1994, except that the local air pollution control authorities
26 may adopt by rule an earlier date on which fees are to be due and
27 payable. The section 5, chapter 252, Laws of 1993 amendments to RCW
28 70.94.161 do not have the effect of terminating, or in any way
29 modifying, any liability, civil or criminal, incurred pursuant to the
30 provisions of RCW 70.94.161 (15) and (17) as they existed prior to July
31 25, 1993.

32 (16) For sources or source categories not required to obtain
33 permits under subsection (4) of this section, the department or local
34 authority may establish by rule control technology requirements. If
35 control technology rule revisions are made by the department or local
36 authority under this subsection, the department or local authority
37 shall consider the remaining useful life of control equipment
38 previously installed on existing sources before requiring technology

1 changes. The department or any local air authority may issue a general
2 permit, as authorized under the federal clean air act, for such
3 sources.

4 (17) Emissions of greenhouse gases as defined in RCW 70.235.010
5 must be reported as required by RCW 70.94.151. The reporting
6 provisions of RCW 70.94.151 shall not apply to any other emissions from
7 any permit program source after the effective date of United States
8 environmental protection agency approval of the state operating permit
9 program.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.94 RCW
11 to read as follows:

12 (1) An anaerobic digester, as that term is defined in RCW
13 70.95.330, that processes at least fifty percent livestock manure by
14 volume or an engine or flare powered by fuel from an anaerobic digester
15 that processes at least fifty percent livestock manure by volume,
16 qualifies for an exemption from the permitting requirements of RCW
17 70.94.161 only if:

18 (a) The facility has a combined aggregate heat input of less than
19 ten million British thermal units of energy per hour; and

20 (b) The facility's sulfur emissions is 0.1 percent or less of its
21 total emissions.

22 (2) Nothing in this section prohibits the department from making
23 facility recommendations under RCW 70.94.163 or from establishing a
24 monitoring program to ensure that an anaerobic digester is being
25 operated consistent with the stated intent of this section.

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